5-9-2017

State v. Anderson Appellant's Brief Dckt. 44620

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**Nos. 44620 & 44621**
Plaintiff-Appellant,	)	
	)	**Payette County Case Nos.**
v.	)	**CR-2016-411 & CR-2016-416**
	)	
KYLE B. ANDERSON,	)	
	)	
Defendant-Respondent.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

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STATEMENT OF THE CASE

Nature Of The Case

The state appeals from the district court's order granting Kyle B. Anderson's motion for a judgment of acquittal.

Statement Of The Facts And Course Of The Proceedings

On or about February 17, 2016, Kyle Anderson called his friend Stephanie Barker and asked to be picked up from the halfway house he was staying at. (Tr., p. 32, Ls. 8-20; p. 57, Ls. 12-13.) Barker, along with Jacob Bittick, picked Anderson up, and they returned to Barker's house, where they all used drugs. (Tr., p. 33, Ls. 6-19; p. 67, L. 4 – p. 68, L. 7.)

The next day, Anderson's probation officer and local law enforcement went to Barker's house to locate Anderson. (Tr., p. 8, Ls. 1-18.) They found Anderson and his belongings in the kitchen, and found nothing illegal after searching his person and his items. (Tr., p. 16, Ls. 1-3; p. 16, L. 22 – p. 17, L. 17.) However, Anderson admitted to his probation officer that he had used heroin the prior day. (Tr., p. 10, Ls. 9-15; p. 27, Ls. 18-25.) The officer noted that Anderson had "track marks," indicating intravenous illegal drug use, on his arm. (Tr., p. 20, L. 18 – p. 21, L. 1; p. 25, L. 25 – p. 26, L. 20.)

The home was searched and a variety of drugs and paraphernalia were found in Barker's bedroom. (Tr., p. 19, Ls. 5-10; p. 87, L. 20 – p. 100, L. 20.) An officer found a glass pipe, "stuck between some clothes," in the bedroom closet. (Tr., p. 104, Ls. 20-25.) The officer concluded based on his training that the pipe was "used in the smoking of Methamphetamine," and Barker told the officer that

it "was Mr. Anderson's" pipe. (Tr., p. 92, L. 23 – p. 93, p. 2; p. 103, Ls. 1-3.) The residue in the pipe later tested positive for methamphetamine. (Tr., p. 143, L. 25 – p. 144, L. 19; State's Ex. 5.)

Two safes were found in the house. (Tr., p. 50, Ls. 8-10.) First, there was a safe on the floor that Barker was able to open for law enforcement. (Tr., p. 40, Ls. 5-12; p. 45, Ls. 8-18.) The floor safe contained methadone pills and a jar of a green leafy substance. (Tr., p. 45, L. 24 – p. 46, L. 3; p. 88, L. 24 – p. 89, L. 3; Defendant's Ex. A.) A smaller locked safe, which Barker did not have access to (the "lockbox"), was found inside the closet. (Tr., p. 50, Ls. 1-10.) Barker explained to the officers that her ex-boyfriend, currently in prison, had the key to it. (Tr., p. 50, Ls. 11-14.) As a result the officers had to pry the lockbox open to access it. (Tr., p. 87, Ls. 13-18.) Inside the lockbox, the officers found "a cotton swab and a spoon with some black residue" on it, a baggie with residue, and a baggie with "small white crystals." (Tr., p. 87, Ls. 9-18; Defendant's Exhibit A.) The spoon's residue later tested positive for heroin, and the white crystal in the baggie tested positive for methamphetamine. (Tr., p. 138, 18-22; p. 140, Ls. 12-15; p. 141, Ls. 18-22; State's Ex. 4.)

Anderson was charged with possession of methamphetamine and heroin in CR-2016-416, and possession of paraphernalia in CR-2016-411. (R., pp. 60-61, 211.)[1] At trial, Barker testified that Anderson and Bittick arrived at her house on approximately February 17 and that the trio used drugs. (Tr., p. 32, Ls. 8-11;

[1] Charges alleging that Anderson possessed marijuana and methadone were dismissed on the state's motion prior to trial. See R., p. 106.

p. 35, Ls. 3-5.) She testified that she "saw [Anderson] using heroin in the living room" and maybe the bedroom as well, and that Anderson smoked methamphetamine using a glass pipe. (Tr., p. 35, Ls. 10-14; p. 35, L. 24 – p. 36, L. 10.) Barker testified that when police arrived Anderson gathered "all of his paraphernalia, the pipe, the spoon" from the living room coffee table and put the items in her room in a "scattered" fashion (Tr., p. 37, 16-23; p. 41, L. 24 – p. 43, 8.) Barker also testified that she recognized the methamphetamine pipe found in the closet as the one that was previously on the coffee table, and that it was Anderson's pipe. (Tr., p. 44, L. 22 – p. 45, L. 7.) When asked, "did you use both Methamphetamine and heroin with Mr. Anderson?," Barker testified that she did. (Tr., p. 47, Ls. 11-13.)

Bittick similarly testified that after he and Barker picked up Anderson, "[w]e did drugs," and that Anderson used both heroin and methamphetamine. (Tr., p. 67, Ls. 9-21; p. 68, Ls. 3-7.) Bittick testified that Anderson smoked methamphetamine specifically with a "glass pipe." (Tr., p. 69, L. 15 – p. 70, L. 5.)

The state rested its case and Anderson moved for a judgment of acquittal, claiming insufficient evidence for a conviction. (Tr., p. 148, L. 13 – p. 150, L. 3.) Anderson noted that there were three items sent to the state lab for testing: 1) the baggies with methamphetamine crystals; 2) the heroin in the spoon and cotton swab; and 3) the glass pipe with methamphetamine residue found in the closet. (Tr., p. 148, L. 16 – p. 149, L. 10.) Anderson argued that the methamphetamine baggies and the spoon with heroin were found "in a locked

safe that no one had access to."[2] (Tr., p. 148, L. 19 – p. 149, L. 4.) Moreover, regarding the methamphetamine pipe, Anderson argued "the only evidence that pointed to Mr. Anderson whatsoever of ever having possession" of it was the testimony of his "accomplices."[3] (Tr., p. 149, Ls. 7-10.) Anderson argued that his admission of drug use "had nothing to do" with the pipe, and "only was an admission to a relapse with **heroin**." (Tr., p. 149, Ls. 20-22 (emphasis added).) Thus, he claimed, the testimony regarding the pipe was uncorroborated accomplice testimony. (Tr., p. 149, L. 11 – p. 150, L. 3.)

[2] Whether the floor safe contained any heroin or methamphetamine was a point of confusion at trial. Barker was asked if there was "a spoon and a cotton swab found in" the floor safe—a reference to state's exhibit 2, a spoon with dark residue that tested positive for heroin. (Tr., p. 46, Ls. 5-7; State's Exs. 2, 4.) Barker initially responded "[y]eah," the spoon was found in the floor safe. (See Tr., p. 46, Ls. 5-7.) However, she later testified that she was not sure if the cotton was in the spoon, that she "didn't know what was really in there," and that she did not recognize the spoon and the swab. (Tr., p. 46, Ls. 7-22.) Barker also testified that she would not know the difference between "a spoon and cotton swab that was used by Mr. Anderson and what was used by" herself. (Tr., p. 56, Ls. 21-24.) By contrast, Officer Toth repeatedly testified that the spoon and cotton swab were found inside the *lockbox*. (Tr., p. 87, Ls. 9-18; p. 90, L. 21 – p. 91, L. 2.) The state stipulated to admit Toth's report into evidence, and it listed "[a] spoon with black tar like material" as part of the lockbox inventory. (Defense Ex. A.) When asked to clarify whether he found any "suspected heroin or heroin paraphernalia" in the floor safe Officer Toth stated that he did not. (Tr., p. 89, Ls. 5-9.) As for methamphetamine, Officer Toth testified that he did not recall finding any methamphetamine in the floor safe. (Tr., p. 89, Ls. 10-15.) Toth speculated that there "might" have been "a baggie with some possible residue in [the floor safe]," but was not questioned further about this recollection. (Tr., p. 89, Ls. 16-19.) Moreover, Toth's report stated that baggies containing residue and white crystals were found in the lockbox, and not the floor safe. (Defense Ex. A.) Regardless of the contents of the ground safe, there was still ample evidence that Anderson possessed the pipe with methamphetamine found outside both safes, as explained herein.

[3] The district court had granted Anderson's request that the jury be given an accomplice instruction. (See R., pp. 102-03, 116.)

The state argued that there was sufficient evidence that corroborated the accomplice testimony. (Tr., p. 150, L. 14 – p. 151, L. 4; see also R., p. 170.) Even granting that the methamphetamine baggies and heroin were found in the inaccessible lockbox, the state pointed out that the pipe was found outside of the lockbox. (See Tr., p. 152, Ls. 9-13.) The state argued that in light of the corroborated testimony that the pipe belonged to Anderson, there was still sufficient evidence to support the methamphetamine possession charge:

> So, I mean, if the baggie of Methamphetamine is thrown out, we still have the pipe for the charge of Methamphetamine. However, if the heroin charge is dismissed, of course there's no alternative object or evidence in relation to the heroin charge.

(Tr., p. 152, Ls. 9-13.) The district court took Anderson's motion under advisement (Tr., p. 152, Ls. 14-15), and the jury found Anderson guilty of possession of methamphetamine, heroin, and paraphernalia. (Tr., p. 160, Ls. 15-23.) In post-trial briefing responding to Anderson's renewed motion for a judgment of acquittal, the state argued that there was corroborating evidence supporting both the conviction for heroin possession and the conviction for methamphetamine possession. (See Tr., p. 157, Ls. 12-20; R. p. 170.)

The district court granted Anderson's renewed motion for a judgment of acquittal. (R., pp. 175-82.) In doing so the court adopted much of Anderson's argument in favor of acquittal; it found that there was no evidence that corroborated Barker's and Bittick's testimony against Anderson. (R., p. 181.) In particular, the district court noted that "Anderson's admission of heroin use and the 'track marks' located on his arm could potentially corroborate the accomplice testimony regarding possession of heroin, except that the heroin admitted at trial

was recovered from a lockbox in Barker's closet that had to be forced open because no one had a key to it." (R., p. 181.) With respect to the methamphetamine pipe, the court found "[t]here is nothing about the discovery of the meth pipe that links Anderson specifically to being in possession of it." (R., pp. 181, 244.) The district court concluded:

> Similar to *State v. Dietrich* [135 Idaho 870, 26 P.3d 53 (Ct. App. 2001)], the only evidence linking Anderson to possession of the controlled substances and possession of paraphernalia was the testimony of Barker and Bittick claiming that Anderson brought the heroin to the residence, injected heroin while at the residence, smoked meth, owned the meth pipe, and stashed some of the illegal items in their bedroom. Because there is no evidence to corroborate the testimony of Barker and Bittick linking Anderson to the crimes, the evidence is insufficient to sustain Anderson's convictions.

(R., p. 181.) The district court granted Anderson's motion for a judgment of acquittal. (R., pp. 182.) The state timely appealed in case numbers 411 and 416, now consolidated on appeal. (R., pp. 190-93, 234-237.)

ISSUE

Did the district court erroneously find that there was no evidence to corroborate Barker's and Bittick's testimony, and therefore erroneously conclude there was insufficient evidence to sustain Anderson's convictions?

ARGUMENT

Because There Was Ample Evidence That Corroborated Barker's and Bittick's Testimony, The District Court Erroneously Concluded That There Was Insufficient Evidence To Sustain Anderson's Convictions

A. Introduction

Anderson moved the district court for a judgment of acquittal of the jury's guilty verdict. (R., pp. 162-66.) The court granted that motion, finding "the only evidence linking Anderson to possession of the controlled substances and possession of paraphernalia" was the testimony of his accomplices, Barker and Bittick. (R., p. 181.) But this was an error, as there was ample corroboration of Barker's and Bittick's testimony—the track marks on Anderson's arm, the timing of his admitted relapse, and his own admissions that he used drugs while staying with Barker and Bittick. Because substantial, competent evidence supported the jury's finding beyond a reasonable doubt that Anderson was guilty of possession of methamphetamine, heroin, and paraphernalia, the district court erred by granting Anderson's motion to overturn the jury's verdict.[4]

B. Standard Of Review

In reviewing a Rule 29 judgment of acquittal, this Court looks to "whether there was substantial evidence upon which a trier of fact could have found the essential elements of the crime beyond a reasonable doubt." State v. Hoyle,

[4] The state also contends that even assuming, *arguendo*, there was insufficient evidence to support a conviction for possession of the heroin found within the lockbox, there was nevertheless ample evidence to support a conviction for possession of the methamphetamine found outside the lockbox, as explained herein.

140 Idaho 679, 684, 99 P.3d 1069, 1074 (2004); see State v. Oliver, 144 Idaho 722, 724, 170 P.3d 387, 389 (2007); see State v. Reyes, 121 Idaho 570, 826 P.2d 919 (Ct. App. 1992). This Court views the evidence "in the light most favorable to the prosecution, and we do not substitute our judgment for that of the jury regarding the credibility of the witnesses, the weight of the evidence, and the reasonable inferences to be drawn from the evidence." Oliver, 144 Idaho at 724, 170 P.3d at 387; State v. Knutson, 121 Idaho 101, 822 P.2d 998 (Ct. App. 1991); State v. Hart, 112 Idaho 759, 761, 735 P.2d 1070, 1072 (Ct. App. 1987). The facts, and inferences to be drawn from those facts, are therefore construed in favor of upholding the jury's verdict. See Oliver, 144 Idaho at 724, 170 P.3d at 387; see also Hart, 112 Idaho at 761, 735 P.2d at 1072. Consequently, "[w]here there is competent although conflicting evidence to sustain the verdict, this court cannot reweigh that evidence or disturb the verdict." State v. Merwin, 131 Idaho 642, 644-45, 962 P.2d 1026, 1028–29 (2002); Hoyle, 140 Idaho at 684, 99 P.3d at 1074.

C. The Timing Of Anderson's Relapse, The Track Marks On His Arm, And Anderson's Own Statements About His Drug Use While In Barker's House Corroborated Barker's And Bittick's Testimony

Idaho Code § 19-2117 provides:

> A conviction cannot be had on the testimony of an accomplice, unless he is corroborated by other evidence, which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration is not sufficient, if it merely shows the commission of the offense, or the circumstances thereof.

The purpose of requiring corroborating evidence is "to offset the danger that an accomplice may wholly fabricate testimony inculpating an innocent person in

order to win more lenient treatment" from the state. State v. Campbell, 114 Idaho 367, 369, 757 P.2d 230, 232 (Ct. App. 1988). While the corroborating evidence must be independent of accomplice testimony "it need not be sufficient in and of itself" to sustain a conviction. Id. at 369-70, 757 P.2d at 232; State v. Aragon, 107 Idaho 358, 364, 690 P.2d 293, 299 (1984). In fact, "[t]he corroborating evidence may be slight, need only go to one material fact and may be entirely circumstantial." Campbell, 114 Idaho at 370, 757 P.2d at 232; State v. Evans, 102 Idaho 461, 463, 631 P.2d 1220, 1222 (1981); State v. Brown, 53 Idaho 576, 581, 26 P.2d 131, 133 (1933). A defendant's own statements "may supply the corroboration of an accomplice that is necessary for conviction." Campbell, 114 Idaho at 370, 757 P.2d at 232; State v. Garcia, 102 Idaho 378, 385, 630 P.2d 665, 672 (1981). Lastly, corroborating evidence need not corroborate "every detail of the accomplice's testimony." State v. Stone, 147 Idaho 890, 891, 216 P.3d 648, 649 (Ct. App. 2009); State v. Mitchell, 146 Idaho 378, 382, 195 P.3d 737, 741 (Ct. App. 2008).

The Idaho Court of Appeals has shown that even "threadbare," inferential evidence will satisfy the corroboration requirement. See Stone, 147 Idaho at 892, 216 P.3d at 651. In Stone, the defendant was one of four men charged in connection with a violent robbery. Id. at 891, 216 P.3d at 649. The state alleged that Stone chauffeured the assailants and helped plan the attack. Id. At trial, the victim did not provide testimony specifically pertaining to Stone, but, an accomplice to the crime testified that Stone was "present during conversations" in which the attack was planned and "drove the vehicle to and from the

apartment" of the victim. Id. at 892, 216 P.3d at 650. The state's non-accomplice evidence against Stone was therefore limited to one individual: a detective who interviewed Stone five months after the incident. Id.

The detective testified that he met with Stone and told him he wanted to interview him about an incident in Blackfoot. Id. Stone replied that he had not been in Blackfoot "and that the only thing [Stone] was aware of was what he had seen on the news regarding [accomplices] Bailey and Wall." Id. This slip-up was a clue: as the district court noted, the detective "did not mention names, Stone brought them up." Id. The detective then told Stone that someone "was cooperating with the police, the police knew Stone was involved, and Stone could probably get the same deal" as the cooperator "if Stone would cooperate" too. Id. Stone backpedaled, conceding now that "he had, in fact, been in Blackfoot, but that all he knew was that the incident occurred because 'a guy owed somebody some money,'" which, claimed Stone, he "learned from the news." Id.

The district court found Stone's cryptic statements, while "certainly tenuous," were nevertheless sufficient to corroborate the accomplice testimony:

> Although the corroborating evidence is threadbare, this Court finds that the inferences therefrom tend to connect Stone to the crime. If, as Stone seemed to indicate to [the detective], Stone was merely a casual observer of a news story, it seems unlikely that Stone would recall the names of the perpetrators five months after the crime, and the subsequent news story, became public information. In addition, Stone's sudden change in recollection, when [the detective] told Stone that he could receive more favorable treatment like the cooperating individual if Stone would cooperate with the police, is at odds with someone who had absolutely no connection, other than as a recipient of a news story, to a criminal act. Reasonable minds can infer from Stone's statements to

> Cronquist that Stone knew more about the incident than he was willing to reveal….

Id. at 892-93, 216 P.3d at 650-51.

On appeal, the Idaho Court of Appeals affirmed that the corroborating evidence against Stone—inferential and meager though it was—was enough:

> We agree with the district court's characterization of both the strength and sufficiency of the corroborative evidence. As noted, corroborative testimony may be "slight" and need only "tend" to connect the defendant to the crime. Stone's unsolicited knowledge of the names of the individuals involved, and the motive for the crime, could reasonably be inferred to indicate more involvement than a passive recipient of news. Even a highly plausible innocent explanation of the evidence "does not strip the evidence of its corroborative character." Moreover, one is entitled to reasonably question why Stone would initially claim not to be in Blackfoot and then change his story if he had no connection at all to the incident.

Id. at 893, 216 P.3d at 651. The Stone Court accordingly found that "[s]ufficient corroborative evidence was presented at trial to sustain the verdicts," and affirmed. Id.

Here, there was ample evidence that corroborated Anderson's accomplices' testimony. Anderson had track marks on his arm, which indicated illegal drug use in general, and was potential evidence of methamphetamine or heroin use. (See Tr., p. 20, L. 15 – p. 21, L. 1; p. 26, Ls. 4-20.) Moreover, Anderson's own statements to his probation officer corroborated that he had been at Barker's house and relapsed with heroin on February 17. (Tr., p. 10, Ls. 11-15; p. 27, Ls. 18-25.) This is the same timeframe in which his accomplices testified he was present, using drugs with them. (Tr., p. 32, Ls. 8-13; p. 66, L. 24 – p. 67, L. 3; p. 67, Ls. 9-14; p. 74, 21-23.)

Finally, Anderson corroborated his accomplices' statements that he was using drugs with them. When Barker was asked "did you use **both** Methamphetamine and heroin with Mr. Anderson" she testified that she did. (Tr., p. 47, Ls. 11-13 (emphasis added).) Bittick similarly testified that "We did drugs," that "Meth **and** heroin" were the drugs of choice, and that Anderson both smoked methamphetamine and used heroin. (Tr., p. 67, L. 12 – p. 69, L. 17 (emphasis added).) Anderson corroborated both accomplices' testimony in his statements to Galloway:

> Q: And what inquiry as to [Anderson's] activities did you make with Mr. Anderson?
>
> A: I asked him how long he had been there. And he told me he'd been there approximately three days. I asked him what he was doing. I asked him what his activities were. **And he told me he had been using heroin.**

(Tr., p. 10, Ls. 9-15 (emphasis added).) Further, Anderson did not deny using methamphetamine, nor did he say that he *only* used heroin. (See Tr., p. 10, Ls. 9-15.) Viewing the evidence in the light most favorable to the prosecution, and construing inferences in favor of upholding the jury's verdict, Anderson's confirmation that he used heroin is more than sufficient to corroborate Barker's and Bittick's testimony about his drug use—that Anderson used both heroin *and* methamphetamine.

The Stone holding affirms that the corroborative evidence here was more than sufficient. Per Stone, even threadbare evidence can be corroborative notwithstanding a "highly plausible innocent explanation" for it. 147 Idaho at 892-93, 216 P.3d at 651-52. Here, the corroborating evidence was ample, went

to multiple material facts, and had no innocent explanation—Anderson openly admitted to illegal drug use during the time and at the place in question. (Tr., p. 10, Ls. 9-15.) Furthermore, the Stone Court found that a factfinder can draw reasonable inferences from the corroborative evidence before it. See 147 Idaho at 893, 216 P.3d at 652. It is an entirely reasonable inference that because Anderson admitted to using heroin at Barker's house—and did not disclaim that he used *only* heroin—that he not only used heroin, but participated in the methamphetamine use that contemporaneously occurred there.

The district court concluded otherwise, finding that Anderson's statements regarding heroin use and the track marks on his arm "could potentially corroborate the accomplice testimony regarding possession of heroin, except that the heroin admitted at trial was recovered from a lockbox in Barker's closet that had to be forced open because no one had a key to it." (R., p. 181.) With respect to the methamphetamine pipe—found outside the lockbox—the court concluded that "[t]here is nothing about the discovery of the meth pipe that links Anderson specifically to being in possession of it." (R., p. 181.) In other words, the district court found that Anderson's statements about heroin use corroborated nothing—because the heroin found by police in the lockbox was inaccessible, and because heroin is not the same substance as methamphetamine. (See R., p. 181.)

But even granting that Anderson could not have possessed the lockbox items,[5] the district court set an erroneously high bar by completely disregarding Anderson's admissions and track marks—both with respect to the heroin charge, and the methamphetamine charge. Regarding the heroin charge, the eyewitness testimony of two accomplices, combined with Anderson's admission of using heroin, and the evidence of track marks on his arm, were sufficient to support his conviction for possessing heroin *other* than that found in the lockbox.

In addition, with respect to the methamphetamine charge, ignoring Anderson's heroin admissions goes contrary to the expansive analysis in Stone. In that case there was nothing about Stone's mere knowledge of the accomplices' names or newsworthy facts of the case that personally linked him to *participating* in the multiple crimes they committed. Nor was there anything about Stone changing his story about simply *being* in Blackfoot that connected him to any event whatsoever, let alone specifically connected him to the particular crimes at issue. Nevertheless, the Stone Court, proceeding entirely inferentially, deduced that Stone's knowledge alone "could reasonably be inferred to indicate more involvement than a passive recipient of news," and that "one is entitled to reasonably question" why a person would change an otherwise-innocuous story if "he had no connection at all to the incident."

[5] As alluded to below, the state concedes on appeal that there was insufficient evidence to show that Anderson—or for that matter anyone other than Barker's imprisoned boyfriend—could access the heroin found in the lockbox. (See Tr., p. 152, Ls. 9-13.) However, as argued below and herein, this has no bearing on the methamphetamine pipe found *outside* the lockbox, which ample evidence shows Anderson possessed. Nor does it disprove or otherwise foreclose possession of heroin other than that found in the lockbox.

147 Idaho at 893, 216 P.3d at 651. If inferences that far-reaching and tenuous are permissible, one would easily be entitled to question why Anderson would affirm using some drugs if he "had no connection at all" to the rest of the illegal drug use taking place at the same time, in the same house, and with the same parties. Given the logic of Stone, one can readily and reasonably infer from Anderson's heroin admissions that he also used methamphetamine.

The district court's reliance on State v. Dietrich, 135 Idaho 870, 26 P.3d 53 (Ct. App. 2001), was also misplaced. In Dietrich, the defendant was charged with five counts of burglary and conspiracy to commit burglary. Id. at 871, 26 P.3d at 54. The sole physical evidence tying the defendant to the crimes was a Magnavox box recovered from the house that the defendant and his accomplices lived in. Id. at 871, 874, 26 P.3d at 54, 57. One of Dietrich's accomplices testified that the box was used to carry stolen equipment. Id. at 871-72, 26 P.3d at 54-55. However, the court noted that the box could not be non-accomplice evidence because "the box itself is linked to the burglary only by [an accomplice's] testimony." Id. at 874, 26 P.3d at 57. Moreover, the court noted *arguendo* that "[e]ven if there was corroboration that the box came from the burglarized house, discovery of the box in the apartment where Dietrich resided would not seem to connect Dietrich to the crime because [the accomplice] also resided in the same apartment." Id. at 874, 26 P.3d at 57, n. 2. The Dietrich Court therefore held that "there was no physical evidence nor testimony from any person other than [an accomplice] that indicates Dietrich was

involved in these burglaries or the associated conspiracy." Id. at 874, 26 P.3d at 57.

Dietrich is readily distinguishable from this case, because Anderson himself admitted to participating in illegal drug use while he stayed at the apartment. (Tr., p. 10, Ls. 9-15.) Unlike the Magnavox box in Dietrich—which carried legal significance only because of the accomplice testimony—Anderson's track marks and admissions of drug use are self-evidently significant, plainly bearing on the question of whether he used and possessed drugs *other* than those found in the lockbox while he was there. Because Anderson himself bore physiological signs of drug use, and admitted to using illegal drugs at the time and place in question, Dietrich is inapplicable.

Because the district court erroneously found that Barker's and Bittick's testimony was not corroborated, it incorrectly concluded the evidence was insufficient to sustain Anderson's convictions for possession of heroin, methamphetamine, and paraphernalia. Construing the facts and inferences in favor of upholding the jury's verdict, the jury correctly found that the evidence supported a guilty verdict.

CONCLUSION

The state respectfully requests this Court reverse the order of the district court and remand for further proceedings.

DATED this 9th day of May, 2017.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of May, 2017, served a true and correct copy of the foregoing BRIEF OF APPELLANT by emailing an electronic copy to:

ERIC D. FREDERICKSEN
STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

KDG/dd